



Texas General Land Office -Disaster Recovery

Notice: Environmental Guidance

Subject: Guidance on HUD-assisted Environmentally Exempt Activities

Purpose: Provide guidance regarding Exempt Activities that can be conducted by Responsible Entities prior to obtaining an Environmental Clearance under NEPA and other provisions of law or authorities cited in §58.5.

Effective Date: September 20, 2012

Introduction

In compliance with the provisions of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations at 40 CFR parts 1500 through 1508, the Texas General Land Office (GLO) has been tasked with implementing environmental guidance procedures, in accordance with HUD Part 58 Environmental Review Guidance, for projects which result in a federal undertaking. This includes, but is not limited to, grants, loans, insurance, down payment assistance, project relocation, new construction, rehabilitation, and reconstruction activities.

A detailed project description is required to ensure a proper level of environmental review is determined prior to compiling information for an Environmental Review Record (ERR).

Guiding Documents

§58.34 Exempt Activities (Code of Federal Regulations)¹:

(a) Except for the applicable requirements of §58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in §58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

- (1) Environmental and other studies, resource identification and the development of plans and strategies;
- (2) Information and financial services;
- (3) Administrative and management activities;
- (4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- (5) Inspections and testing of properties for hazards or defects;
- (6) Purchase of insurance;
- (7) Purchase of tools;
- (8) Engineering or design costs;
- (9) Technical assistance and training;

¹ 24 CFR Part 58, PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES <http://www.gpo.gov/fdsys/pkg/CFR-2011-title24-vol1/pdf/CFR-2011-title24-vol1-part58.pdf>

(10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration:

(11) Payment of principal and interest on loans made or obligations guaranteed by HUD

(12) Any of the categorical exclusions listed in §58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in §58.5.

(b) A recipient does not have to submit a RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or projects is exempt and meets the conditions specified for such exemption under this section.

Clarification Notice

§58.34 – GLO’s Interpretation (by line item)

§58.34(a) – This portion of the regulation explains that classifying a project as Exempt would mean the Responsible Entity would still be required to fill out the Compliance Documentation Checklist (per §58.6); however, the RE does not have to comply with the requirements of §58.5 (Statutory Checklist) if the project meets one of the twelve outlined exempt activities.

§58.34(a)(1) – Environmental and other studies, resource identification and the development of plans and strategies includes any study that is needed to draw a conclusion about a particular element of §58.5. This could include archaeological surveying, noise studies, as well as any plans and/or strategies that would need to be implemented to address potential mitigation factors.

§58.34(a)(2) – Information and financial services include services that only impact the costs associated with the dissemination of information (such as informational literature), as well as any costs associated with financial transactions (which includes any banking processes, money management, etc); these would be actions that are not tied to any construction costs/actions.

§58.34(a)(3) – Administrative and management activities are most notably tied to Administrative and Project Delivery Costs. This regulation does not cover any Project Costs.

Examples of Administrative Costs include: Costs for services to be conducted on behalf of the Department that are not specifically linked to housing or non-housing activities (Services include: application workshops, public hearings, trainings, workshops and meetings, reports, office supplies, etc.).

Examples of Project Delivery Costs include: Case Management costs, preparation of bid documents, procurement of services or goods, technical assistance, predevelopment costs, compliance reviews, environmental costs, construction oversight, project-related travel costs, record keeping, and tasks which do not result in construction.

Examples of Project Costs include: Hard Costs (such as labor and materials), Acquisition or labor compliance activities, Inspections (i.e. Lead-based Paint, asbestos, etc.), related code enforcement, permits, or engineering activities, and document fees (such as recording fees, appraisals, legal assistance fees, etc.).

§58.34(a)(4) – Public services are those which are administered by a government. This regulation includes services that will not have a physical impact or result in any physical changes (including, but not limited to, services that are concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs).

§58.34(a)(5) – Inspections and testing of properties for hazards or defects include Phase I & Phase II Environmental Site Assessment testing, lead-based paint and asbestos testing, and any other test or inspection that may be needed to evaluate the environmental concerns of a project site.

§58.34(a)(6) – Purchase of Insurance includes the purchase of structural and flood insurance for a HUD-funded project.

§58.34(a)(7) – Purchase of tools includes any tool that you can hold in your hand. (i.e. An ambulance would not be considered a tool; instead, it would be considered an equipment purchase and, therefore, would not be eligible as an exempt activity. A hammer would be considered a tool.).

§58.34(a)(8) – Engineering and design costs are exempt activities for the project grant.

§58.34(a)(9) – Technical assistance and training include travel costs associated with attending/conducting trainings and technical assistance, as well as training course fees.

§58.34(a)(10) – Although the CDBG Disaster Recovery Program is assisting sites that have had damaging effects from natural disasters, the intent of this regulation is to only allow for the immediate control or arrest from an imminent threat to public safety, including those resulting from physical deterioration, to be classified as an exempt activity. (i.e. If a storm-damaged roof had a leak that was causing damage to the drywall in a home, this regulation could be used to purchase and apply a tarp to control the immediate danger until a full environmental review can be conducted to potentially fully replace the roof.)

§58.34(a)(11) – This regulation allows for payments of principal and interest on loans made or guaranteed by HUD without having to undergo a full environmental review. The CDBG Disaster Recovery Program does not currently deal with any instances where this could be applied.

§58.34(a)(12) – Categorically Excluded projects under §58.35(a) that do not require mitigation under any Federal laws and authorities cited in §58.5 (referring to the Statutory Checklist) could possibly convert from Categorically Excluded Subject to §58.5 to Exempt.

§58.34(b) – Based on this regulation, if a project meets the substantive and documentation qualifications to be classified as Exempt, then a Request for Release of Funds and Certification (HUD Form 7015.15) is not needed and the recipient may begin to drawdown funds to carry out the exempt activities. (GLO will provide written acknowledgement to the RE/Recipient to validate that the project classification has been accepted.)